





City of Loma Linda Official Report

Karen Gaio Hansberger, Mayor
Floyd Petersen, Mayor pro tempore
Robert Christman, Councilmember
Stan Brauer, Councilmember
Robert Ziprick, Councilmember

COUNCIL AGENDA:

TO: City Council

VIA: Dennis R. Hallaway, City Manager 

FROM: Deborah Woldruff, AICP, Community Development Director 

SUBJECT: Request for Approval of an Agreement for Professional Services
for Planning/Environmental Consultant Staff Services

RECOMMENDATION

It is recommended that the City Council approve the Agreement for Professional Services (Attachment 1) with Lilburn Corporation to perform planning and environmental staff services.

BACKGROUND

At this time, the City is experiencing a building boom that is not anticipated to slow down any time soon. Community Development staff, especially Planning staff, is inundated with development and subdivision applications and other related development requests in addition to continued work and public hearings on the Draft General Plan. At the same time, Planning staff is kept very busy with the issues and tasks associated with providing staffing services to the Planning Commission, Historical Commission, Senior Center Board, Trails Development Committee, and Administrative Review Committee. As a result, it is becoming more and more difficult to meet project processing time frames that are mandated by the California Permit Streamlining Act and California Environmental Quality Act.

ANALYSIS

As indicated, Planning staff is being kept very busy with the current level of planning and building activity, and other major projects and committee requirements. Approval of the proposed Agreement for Professional Services with Lilburn Corporation will assist Planning staff to maintain state mandated time frames for project processing and environmental review. In the past several months, project applicants have been dissatisfied with the project processing times. Several applicants have suggested that they could provide planning consultant services to the City to assist with the processing of their projects. Staff is not comfortable with the idea of using consultants that have been selected by project applicants to assist staff with project review and processing.

A reasonable alternative is for the City select a qualified consultant to assist with project review and processing, and environmental review. The project applicant would pay the cost of all such services on a pass through basis. Project applicants would be given the option of using the City's consultant for processing their projects or processing with City staff in the usual way. The benefit to project applicants is having the opportunity for a more expeditious project and environmental review process, assuming that they are interested in paying for the consultant services.

In 2001 and 2002, Lilburn Corporation provided staffing services to the Planning Division through two separate Agreements. They are very knowledgeable about the City's General Plan and Zoning Code, geographic layout and environmental hazards and constraints, and the Department's project and environmental review processes. Planning staff has confidence in their abilities and works well with Lilburn Corporation personnel. For the reasons stated, the Community Development Department recommends that the City Council approve the attached Agreement.

ENVIRONMENTAL

The proposed Agreement for Professional Services between the City and Lilburn Corporation for planning and environmental staff services is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15061(b)(3), which states the following:

“...CEQA applies only to projects [that] have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

In general, the performance of planning and environmental staff services involves the review and processing of development applications, preparation of environmental documents, technical studies, and staff reports for projects that are either subject to or exempt from CEQA. In either case, each project will receive an appropriate level of environmental review. The performance of such services will not have a direct effect on the environment.

FINANCIAL IMPACT

The proposed planning and environmental staff services would not result in any financial impacts to the City because all such costs would be paid by project applicants on a pass through basis.

ATTACHMENT

1. Agreement for Professional Services
Exhibit: A. Scope of Services

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ 2004, by and between THE CITY OF LOMA LINDA, a Municipal Corporation (hereinafter referred to as "CITY") and LILBURN CORPORATION, a California corporation, (hereinafter referred to as "CONSULTANT").

A. RECITALS

1. CITY has need of a consultant to provide professional planning and environmental staff services ("PROJECT" hereinafter);

2. CONSULTANT previously has provided professional planning and environmental staff services to CITY and other cities;

3. CITY desires to retain CONSULTANT to perform professional planning and environmental staff activities and duties necessary to assist CITY with the PROJECT. The cost of such services are to be passed through to developers for specific development applications;

4. CONSULTANT represents that it is qualified to perform such services and is willing to perform such services necessary to render advice and assistance to CITY in the preparation of PROJECT as hereinafter defined.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

B. AGREEMENT

1. Definitions: The following definitions shall apply to the following terms, except where the context of this Agreement otherwise requires:

a. PROJECT: The preparation of all of the necessary maps, plans, reports and documents as outlined in the Scope of Services described in Exhibit "A" hereto;

b. SERVICES: Such professional services as are necessary to be performed by CONSULTANT in order to complete the PROJECT;

c. TERM: This Agreement shall commence upon execution and shall remain and continue in effect for a period of 12 months unless sooner terminated pursuant to the provisions of this Agreement.

2. CONSULTANT agrees as follows:

a. CONSULTANT shall forthwith undertake and complete the PROJECT in accordance with Exhibit "A" and applicable with Federal, State and CITY statutes, regulations, ordinances and guidelines, all to the reasonable satisfaction of the CITY.

b. CONSULTANT shall supply copies of all maps, surveys, reports, plans and documents (hereinafter collectively referred to as "documents") including all supplemental technical documents, as described in Exhibit "A" to CITY on a timely basis as required to meet the schedule for processing development applications. Copies of the documents shall be in such numbers as are required by Exhibit "A". CITY may thereafter review and forward to CONSULTANT comments regarding said documents and CONSULTANT shall thereafter make such revisions to said documents as are deemed necessary. CITY shall receive revised documents in such form and in the quantities determined necessary by CITY. The time limits set forth pursuant to this Section B2b may be extended upon a written approval of CITY.

c. CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such other persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subcontractor shall be retained by CONSULTANT except upon the prior written approval of CITY.

d. CONSULTANT shall, at CONSULTANT'S sole cost and expense, secure the required issuance of a City Business License as a condition precedent to being engaged as a CONSULTANT within the CITY.

3. CITY agrees as follows:

a. To pay to CONSULTANT as outlined in Exhibit "A" for the performance of the services required hereunder. This sum shall cover the cost of all staff time and all other direct and indirect costs or fees, including the work of employees, consultants and subcontractors to CONSULTANT. Payment to CONSULTANT, by CITY, shall be made in accordance with the Schedule set forth in Exhibit "A".

b. Payments to CONSULTANT shall be made by CITY in accordance with the invoices submitted by CONSULTANT, on a monthly basis, and such invoices shall be paid within a reasonable time after said invoices are received by CITY. All charges shall be detailed with respect to hourly rates (as set forth in Exhibit "A") and time expenditures for individual tasks.

c. Additional Services: Payments for additional services requested, in writing, by CITY, and not included in the Scope of Services as set forth in Exhibit "A" hereof, shall be paid on a reimbursement basis in accordance with the fee schedule set forth in Exhibit "A". Charges for additional services shall be invoiced on a monthly basis and shall be paid by CITY within a reasonable time after said invoices are received by CITY.

4. CITY agrees to provide to CONSULTANT:

a. Information and assistance as set forth in Exhibit "A" hereto;
b. Photographically reproducible copies of maps and other information, if available, which CONSULTANT considers necessary in order to complete the Project;

c. Such information as is generally available from CITY files applicable to the Project;

d. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT'S responsibility to make all initial contact with respect to the gathering of such information.

5. Ownership of Documents: All documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT pursuant to this Agreement shall be considered the property of the CITY and, upon payment for services performed by CONSULTANT, such documents and other identified materials shall be delivered to CITY by CONSULTANT. CONSULTANT may, however, make and retain such copies of said documents and materials as CONSULTANT may desire.

6. Termination: This Agreement may be terminated by CITY upon the giving of written "Notice of Termination" to CONSULTANT at least fifteen (15) days prior to the date of termination specified in said Notice. In the event this Agreement is so terminated, CONSULTANT shall be compensated at CONSULTANT'S applicable hourly rates as set forth in Exhibit "A", on a pro rata basis with respect to work completed as of the date of termination. CONSULTANT shall provide to CITY any and all documents, data, studies, surveys, drawings, maps, models, photographs and reports, whether in draft or final form, prepared by CONSULTANT as of the date of termination. CONSULTANT may not terminate this Agreement except for cause.

7. Notices and Designated Representatives: Any and all notices, demands, invoices and written communications between the parties hereto shall be addressed as set forth in the Paragraph 7. The below-named individuals, furthermore, shall be those persons primarily responsible for the performance by the parties under this Agreement:

CITY:

CITY OF LOMA LINDA

Name: Dennis R. Halloway

Title: City Manager

25541 Barton Road, Loma Linda, CA 92354

CONSULTANT:

LILBURN CORPORATION

Name: Nancy Ferguson

Title: Manager Environmental Programs

Address: 1905 Business Center Drive, San Bernardino, CA 92408

Any such notices, demands, invoices or written communications, by mail, shall be deemed to have been received by the addressee forty-eight (48) hours after deposit thereof in the United States Mail, postage prepaid, and properly addressed as set forth above.

8. Insurance: CONSULTANT shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall CONSULTANT allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. CONSULTANT shall take out and maintain at all times during the term of this Agreement the following policies of insurance:

a. Workers' Compensation Insurance: Before beginning work, CONSULTANT shall furnish to CITY a Certificate of Insurance as proof that it has taken out full Workers' Compensation Insurance for all persons whom it may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California.

In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. CONSULTANT shall, prior to commencing work, sign and file with CITY a certification as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

b. Public Liability and Property Damage: Throughout the term of this Agreement, at CONSULTANT'S sole cost and expense, CONSULTANT shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and CONSULTANT, comprehensive, broad form, general commercial liability and automobile insurance against claims and liabilities for personal injury, death, or property damage arising from CONSULTANT'S activities, providing protection of at least One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person or for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage.

c. Errors and Omissions: CONSULTANT shall take out and maintain at all times during the term of this Agreement, a policy or policies of insurance concerning errors and omissions ("professional liability") providing protection of at least Five Hundred Thousand Dollars (\$500,000.00) for errors and omissions ("malpractice") with respect to loss arising from actions of CONSULTANT performing services hereunder on behalf of CITY.

d. Automobile: Engineer shall take out and maintain at all times during the term of this Agreement, a policy or policies of Automobile bodily injury and property damage liability insurance, the limits of which shall not be less than one million dollars (\$1,000,000) combined single limit per occurrence. Such insurance shall extend to owned, non-owned and hired automobiles used by Engineer's employees, agents or assigns in the performance of this contract.

e. General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and policies required under Paragraph 8b shall name, as additional insureds, CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against CITY and CITY'S elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to CITY by certified mail. CONSULTANT shall furnish CITY with copies of all such policies promptly upon receipt of them, or certificate evidencing the insurance. CONSULTANT may effect for its own account insurance not required under this Agreement.

9. Indemnification: CONSULTANT shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents and employees from all liability from loss, damage, or injury to persons or property, including the payment by CONSULTANT of any and all legal costs and attorneys' fees, in any manner arising out of any negligent or intentional or willful acts or omissions of CONSULTANT in the performance of this Agreement, including, but not limited to, all consequential damages to the maximum extent permitted by law. Said indemnification shall include any claim that CONSULTANT, or CONSULTANT's employees or agents, are considered to be employees of the CITY or are entitled to any employee benefits from CITY, including but not limited to those available under Public Employees Retirement Law.

10. Assignment: No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by CONSULTANT without the prior written consent of CITY.

11. Independent Contractor: The parties hereto agree that CONSULTANT and its employees, officers, and agents are independent contractors under this Agreement and shall not be construed to be employees of CITY for any purpose, including eligibility under Public Employees Retirement Law..

12. Compliance With Laws: CONSULTANT shall comply with all applicable laws in performing its obligations under this Agreement.

13. Confidentiality: Information and materials obtained by the CONSULTANT from CITY during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the CONSULTANT for any purpose other than the performance of this Agreement.

14. Discrimination: The CONSULTANT agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the CONSULTANT agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

15. Government Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Attorneys' Fees: In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

17. Entire Agreement: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only as it is in writing, signed by all parties.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CONSULTANT:
Lilburn Corporation

CITY:
City of Loma Linda, A Municipal
Corporation

By: _____
Nancy Ferguson
Title: Manager Environmental Programs

By: _____
Floyd Petersen
Title: Mayor

ATTEST:

Pamela Byrnes-O'Camb, City Clerk

APPROVED AS TO FORM:

Richard E. Holdaway, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

WORKERS' COMPENSATION INSURANCE CERTIFICATION

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

Signature

Dated: _____